

3d Supp. Kekacs Decl. Ex. 372

Page 1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 Civil Action No. 2:12-cv-06371-SDW-MAH

4 -----x
5 CARE ONE MANAGEMENT, LLC,

6 Plaintiff,
7

8 - against -
9

10 UNITED HEALTHCARE WORKERS EAST,
11 SEIU 1199, et al.,
12 Defendants.

13 -----x

14 July 18, 2018
15 12:09 p.m.

16

17 Videotaped Deposition of JOSEPH BECK,
18 taken by Defendants, pursuant to Subpoena,
19 held at the offices of Raymond James and
20 Associates, 630 Fifth Avenue, New York, New
21 York, before Todd DeSimone, a Registered
22 Professional Reporter and Notary Public of
23 the State of New York.

24

25 Veritext Legal Solutions
26 Mid-Atlantic Region
27 1250 Eye Street NW - Suite 350
28 Washington, D.C. 20005

<p>1 A. No, I have not.</p> <p>2 Q. So I'm going to go over a</p> <p>3 couple of what the lawyers like to call</p> <p>4 ground rules or ideas.</p> <p>5 A. Okay.</p> <p>6 Q. The first thing is that the</p> <p>7 court reporter is obviously typing down</p> <p>8 everything we say.</p> <p>9 A. Correct.</p> <p>10 Q. And so unlike in normal</p> <p>11 conversation, a verbal shake of the head or</p> <p>12 a shrug of the shoulders doesn't really</p> <p>13 convey to the court reporter, so it is</p> <p>14 important that all your answers and my</p> <p>15 questions be verbalized. Does that make</p> <p>16 sense?</p> <p>17 A. Great. Sounds good.</p> <p>18 Q. The next thing is that, again,</p> <p>19 unlike normal conversation, it is really</p> <p>20 important that we don't talk over one</p> <p>21 another. So I will try really hard to ask</p> <p>22 my questions --</p> <p>23 A. Right.</p> <p>24 Q. -- and let you answer and not</p> <p>25 start answering -- not ask another question</p>	Page 6	Page 8
<p>1 until you have finished.</p> <p>2 It is also possible that your</p> <p>3 lawyer or one of the other lawyers in the</p> <p>4 room may object or may say something. If</p> <p>5 that happens, please let them finish, and</p> <p>6 unless your lawyer instructs you not to</p> <p>7 answer the question, then I will ask you to</p> <p>8 answer the question.</p> <p>9 A. Okay.</p> <p>10 Q. I will try to ask really clear</p> <p>11 questions. I may not always succeed. If I</p> <p>12 don't succeed, please ask me for</p> <p>13 clarification, but if you answer the</p> <p>14 question I'm going to assume that you</p> <p>15 understood it. Does that make sense?</p> <p>16 A. Okay, yeah.</p> <p>17 Q. And, similarly, if for any</p> <p>18 reason while we're talking today if you</p> <p>19 realize that an earlier answer was</p> <p>20 incomplete or incorrect in some way, please</p> <p>21 just let me know and we can always -- you</p> <p>22 can always go back and clarify anything you</p> <p>23 need to.</p> <p>24 A. Sounds good, thank you.</p> <p>25 Q. Finally, you can take a break</p>	Page 7	Page 9

<p style="text-align: right;">Page 10</p> <p>1 was actually Morgan Keegan or Raymond James 2 at that point.</p> <p>3 Q. How did you first get involved 4 in the sale of Kateri?</p> <p>5 A. Well, we were advisors to the 6 Archdiocese of New York on certain 7 healthcare matters, and ArchCare is a 8 division essentially or, you know, a 9 related company of the Archdiocese of New 10 York. So we had a client relationship with 11 the people at the Archdiocese and with 12 ArchCare and we were recommended to advise 13 them on certain matters such as the 14 potential sale of their nursing homes.</p> <p>15 Q. And when you say we were 16 advisors, who is the "we"?</p> <p>17 A. Well, it is either Raymond 18 James or Morgan Keegan, depending on what 19 date.</p> <p>20 Q. And in connection with that 21 sale, what was your company's role? What 22 was your job?</p> <p>23 A. We were the strategic advisor 24 to ArchCare and we were eventually hired 25 after an assessment of their businesses to</p>	<p>1 collegially here. And Richard is also the 2 co-head of the Healthcare Group with me 3 here at Raymond James anyway. We had been 4 partners, colleagues, together for many 5 years.</p> <p>6 Q. And how did you and Mr. Lorenti 7 sort of divide the work of the sale of 8 Kateri?</p> <p>9 A. Well, I was the head partner or 10 the head professional on the assignment 11 because it was essentially my client, but 12 we worked collegially. You know, I would 13 review everything and be part of all of the 14 discussions or presentations and so forth.</p> <p>15 Q. And how long before -- how long 16 had you had a relationship with the 17 Archdiocese?</p> <p>18 A. At that point several years 19 before. I know there was another 20 transaction we worked on I believe for the 21 Archdiocese several years earlier that 22 related to the sale of New York Medical 23 College.</p> <p>24 Q. And who at the Archdiocese did 25 you interact with in connection with the</p>
<p style="text-align: right;">Page 11</p> <p>1 sell certain of the nursing homes, 2 including Kateri.</p> <p>3 Q. Who else at the company worked 4 in connection with this sale of Kateri?</p> <p>5 A. This company here, Raymond 6 James?</p> <p>7 Q. Yes.</p> <p>8 A. I'm trying to remember now. I 9 think one of my colleagues, Richard 10 Lorenti, was involved, and we had usually 11 three or four people staffing an assignment 12 like this. I can't recollect exactly who 13 worked on it with me.</p> <p>14 Q. At the time what was 15 Mr. Lorenti's job title?</p> <p>16 A. Managing director.</p> <p>17 Q. And what was your job title?</p> <p>18 A. Managing director.</p> <p>19 Q. So were you all sort of 20 co-equals? How did you all -- what was 21 your relationship?</p> <p>22 A. We were co-equals. I mean, 23 ArchCare and the Archdiocese was 24 principally my client, as I had originated 25 the relationship with them. But we work</p>	<p style="text-align: right;">Page 13</p> <p>1 sale of Kateri?</p> <p>2 A. Well, ArchCare was the entity 3 that we really were retained by. At the 4 end of the day the Archdiocese appointed 5 the board of ArchCare, so there was some 6 involvement or review and discussions with 7 people at the Archdiocese, but principally 8 the day-to-day interaction was with 9 ArchCare.</p> <p>10 Q. And who were the individuals at 11 ArchCare?</p> <p>12 A. Scott LaRue would be the CEO. 13 I believe -- yeah, Scott was CEO then I'm 14 pretty sure. And Annmarie Covone was the 15 CFO. They would be the two principal 16 people we reacted. We also dealt with the 17 board as well.</p> <p>18 Q. How did you go about finding 19 buyers to --</p> <p>20 A. How would we look at finding 21 buyers?</p> <p>22 Q. For Kateri.</p> <p>23 A. Well, you would look at the 24 large public and private nursing home 25 companies that were active nationally, but</p>

<p>1 what they view as the more substantive 2 issues of an offer.</p> <p>3 A. So the Catholic Church has 4 certain ethical and religious directives 5 which are well known, published by the 6 Catholic Bishops, which sets standards for 7 the conduct of healthcare, what things can 8 and can't be done, such as abortions, 9 termination, end of life issues, things of 10 that nature. You can go on the website and 11 look at them.</p> <p>12 So, in theory, that could be a 13 requirement. They could ask the 14 successive -- the successor, the winning 15 bidder, to operate the facility according 16 to the Catholic directives, and that 17 happens quite frequently in other 18 transactions in healthcare for Catholic 19 owned or operated facilities.</p> <p>20 Q. But in the case of this 21 particular sale for the divestiture of 22 Kateri and St. Teresa's, they were 23 removing the --</p> <p>24 A. They decided not to include 25 that as a condition, yes. That looks to be</p>	Page 34	<p>1 this and helped frame it.</p> <p>2 Q. So under Roman II, paragraph 1, 3 for Kateri, so this paragraph appears to be 4 requiring a minimum of five years to 5 operate Kateri as a skilled nursing 6 facility and, if not -- if the condition is 7 not met, there is an additional \$10 million 8 payment.</p> <p>9 A. Right, right, right.</p> <p>10 Q. So what was the -- am I correct 11 that the goal of that additional \$10 12 million payment was to deter the buyer from 13 turning around after purchase and selling 14 it or converting it into condos or 15 something?</p> <p>16 A. Well, yeah. I mean, so, again, 17 working on imperfect memory, we may have 18 recognized that if the facility might have 19 been worth more as a real estate asset for 20 multifamily housing or other kinds of uses 21 than it would be for a nursing home, the 22 desire was to sell it as a nursing home.</p> <p>23 We recognized that if we -- if 24 somebody just closed it right away we could 25 have sold it to somebody else for an</p>
<p>1 the case, right.</p> <p>2 Q. So the last paragraph in that 3 cover e-mail talks about "As we discussed, 4 you will distribute this version to the 5 subcommittee for their review and 6 sign-off."</p> <p>7 A. Uh-huh.</p> <p>8 Q. Do you know who the 9 subcommittee was?</p> <p>10 A. It probably was a group of the 11 ArchCare board that would be overseeing the 12 process. Typically clients like this have, 13 you know, a dedicated group of trustees 14 that would review with management kind of 15 the process and the decision before it was 16 taken to the final board for approval.</p> <p>17 Q. I would like to direct your 18 attention to the attached business 19 considerations and sort of ask you some 20 questions about them.</p> <p>21 A. Okay.</p> <p>22 Q. So, first, was this a document 23 that you were involved in reviewing or 24 editing?</p> <p>25 A. Yeah, I assume we discussed</p>	Page 35	<p>1 alternative use and would have gotten more 2 money and that was not the desire, so they 3 said well, let's ask for more money if they 4 decide they want to do it so we don't look 5 stupid.</p> <p>6 That's my conjecture based on 7 what I would think we would have -- the 8 kind of discussion we might have had with 9 the board at that point.</p> <p>10 Q. Okay. Do you recall what your 11 discussion was with the board?</p> <p>12 A. I can't really recall it now, 13 I'm sorry. It is several years ago, a 14 couple of hundred deals under the -- over 15 the dike.</p> <p>16 Q. On this page I would now like 17 to ask about Roman V, Employees.</p> <p>18 A. Yes.</p> <p>19 Q. Am I correct this is a 20 requirement that the purchaser is going to 21 offer employment and then it is implicit in 22 the understanding that they are going to 23 negotiate an agreement with SEIU?</p> <p>24 A. Right.</p> <p>25 Q. Why was that important, if at</p>

<p style="text-align: right;">Page 158</p> <p>1 asset could impede the closing and could 2 create ill will, and as we pointed out, 3 ArchCare also had other operations where 4 SEIU was involved. 5 So you would like to maintain, 6 all things being equal, good employee/union 7 relationships if you have other businesses 8 where you are working closely with the 9 union. So it just sort of seemed to me 10 <i>prima facie</i> sort of a normal business 11 concern.</p> <p>12 Q. Do you have any reason to 13 believe that the union had any objections 14 to CareOne or Greenfield's purchase of 15 Kateri?</p> <p>16 A. I assume if the union was asked 17 they probably wouldn't be ecstatic about 18 it. But no, that was not discussed to the 19 best of my knowledge with SEIU.</p> <p>20 Q. So, as far as you know, any 21 objection SEIU may or may not have had to 22 the purchase of Greenfield -- the purchase 23 of Kateri by Greenfield or CareOne was not 24 part of ArchCare's decision-making process?</p> <p>25 MS. ALITO: I object to form.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. And to the extent -- 2 A. You two guys probably do. I 3 don't. I'm sorry.</p> <p>4 Q. To the extent that there was a 5 union issue or that ArchCare believed there 6 was a potential for an issue, do you know 7 to what extent that played into ArchCare's 8 decision to reject the CareOne/Greenfield 9 offer?</p> <p>10 A. I can't tell you to what 11 extent. I just don't have that knowledge.</p> <p>12 Clearly it was on the table.</p> <p>13 Q. But you don't know what 14 ArchCare did with that information?</p> <p>15 A. I do not know.</p> <p>16 Q. I wanted to ask you a question 17 about New York State approval of operators 18 for nursing homes.</p> <p>19 A. Uh-huh, right.</p> <p>20 Q. In the proposed 21 CareOne/Greenfield deal in which Joseph 22 Zupnik was going to be the operator as the 23 lessee --</p> <p>24 A. Right, right, right.</p> <p>25 Q. -- in approving that operator,</p>
<p style="text-align: right;">Page 159</p> <p>1 A. Well, I think -- I think it 2 clearly was part of it, if in fact 3 Mr. LaRue and O'Brien's conversation was 4 reflective of it. I think it would be -- 5 it would be normal for a buyer, pardon me, 6 a seller to consider that. But, you know, 7 I have no specific knowledge of any 8 discussions that occurred between ArchCare 9 and SEIU on the matter.</p> <p>10 Q. Okay. And the sum total of the 11 sort of union issues that you think might 12 have been part of the discussion is those 13 sort of bullet point sentences in LaRue's 14 e-mail?</p> <p>15 A. Yeah, right, I think that was 16 what was summarized by Mr. LaRue in his 17 correspondence with Mr. O'Brien that I'm 18 looking again for the first time in eight 19 or ten years.</p> <p>20 Q. And do you know how much, 21 whether or not there was a union issue in 22 Connecticut --</p> <p>23 A. I don't, you know, I just 24 really don't have a recollection of what 25 that was per se.</p>	<p style="text-align: right;">Page 161</p> <p>1 does New York State, if you know, look at 2 the operator's financial capabilities 3 standing alone?</p> <p>4 A. I believe they do, yes.</p> <p>5 Because the operator is the licensed entity 6 that has the license to provide healthcare.</p> <p>7 So the State, as I understand it, and, 8 again, you know, I'm not an expert on this, 9 though I did work for the State of New York 10 many, many moons ago, you know, considers 11 the financial resources and the ability of 12 the operator to sustain the business.</p> <p>13 That's one of the criteria.</p> <p>14 Q. And am I correct that you as 15 the broker were raising concerns about --</p> <p>16 A. Just one point. We do not like 17 to be referred to as a broker. We like to 18 be referred to as investment bankers.</p> <p>19 Q. I'm sorry.</p> <p>20 A. That's quite all right.</p> <p>21 Q. Sorry, it is a whole new world 22 to me.</p> <p>23 So in your role as an 24 investment advisor to ArchCare, you were 25 raising a concern that the State might not</p>

1 CERTIFICATION		Page 166	Page 168	
2		1 Care One Mgmt v. United Healthcare Workers East, Seiu 1199 Joseph Beck	2	E R R A T A
3 I, TODD DESIMONE, a Notary Public for		3	PAGE LINE CHANGE	
4 and within the State of New York, do hereby		4	-----	
5 certify:		5	-----	
6 That the witness whose testimony as		6	-----	
7 herein set forth, was duly sworn by me; and		7	Reason: _____	
8 that the within transcript is a true record		8	-----	
9 of the testimony given by said witness.		9	Reason: _____	
10 I further certify that I am not related		10	-----	
11 to any of the parties to this action by		11	Reason: _____	
12 blood or marriage, and that I am in no way		12	-----	
13 interested in the outcome of this matter.		13	Reason: _____	
14 IN WITNESS WHEREOF, I have hereunto set		14	-----	
15 my hand this 18th day of July, 2018.		15	Reason: _____	
16		16	-----	
17		17	Reason: _____	
18 <i>Todd Desimone</i> TODD DESIMONE		18	-----	
19		19	Reason: _____	
20 * * *		20	-----	
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1 Care One Mgmt v. United Healthcare Workers East, Seiu 1199 2 Joseph Beck		1 Care One Mgmt v. United Healthcare Workers East, Seiu 1199 2 Joseph Beck	Page 169	
3 INSTRUCTIONS TO THE WITNESS		3 ACKNOWLEDGMENT OF DEPONENT		
4 Please read your deposition over		4 I _____ do		
5 carefully and make any necessary corrections.		5 hereby certify that I have read the foregoing		
6 You should state the reason in the		6 pages and that the same is a correct		
7 appropriate space on the errata sheet for any		7 transcription of the answers given by		
8 corrections that are made.		8 me to the questions therein propounded,		
9 After doing so, please sign the errata		9 except for the corrections or changes in form		
10 sheet and date it.		10 or substance, if any, noted in the attached		
11 You are signing same subject to the		11 Errata Sheet.		
12 changes you have noted on the errata sheet,		12		
13 which will be attached to your deposition.		13 _____		
14 It is imperative that you return the		14 DATE _____ SIGNATURE _____		
15 original errata sheet to the deposing		15		
16 attorney within thirty (30) days of receipt		16		
17 of the deposition transcript by you. If you		17		
18 fail to do so, the deposition transcript may		18		
19 be deemed to be accurate and may be used in		19		
20 court.		20		
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